

Internal Revenue Service

Number: **200725027**
Release Date: 6/22/2007

Index Number: 1374.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
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Refer Reply To:
CC:CORP:05
PLR-158600-06

Date:
March 20, 2007

Legend:

Sub1 =

Date1 =

Date2 =

StateZ =

Business1 =

Date3 =

Date4 =

Sub2 =

Date5 =

Date6 =

HoldCo =

Date7 =

Dear :

This letter is in response to your December 18, 2006 request for a ruling on the proper treatment of the 10-year recognition period under § 1374 of the Internal Revenue Code ("the Code"). Additional information was received in correspondence dated February 20, 2007 and March 6, 2007. The material information submitted for consideration is summarized below.

Sub1 reported its taxable income as a C Corporation for all taxable years ending prior to Date1. Effective with its year beginning in Date2, Sub1 elected to be taxed as an S corporation under § 1361 of the Code. Sub1 is incorporated in StateZ and engaged in Business1. Sub1 keeps its books and files Form 1120S on the basis of a 52-53 week year ending on Date3.

On Date4, Sub1 created a wholly-owned subsidiary, Sub2. Sub1 filed a timely qualified subchapter S subsidiary ("QSub") election on Form 8832 and included Sub2 in the Sub1 Form 1120S for the tax year ending in Date5.

On Date6, the shareholders of Sub1 transferred 100 percent of the stock of Sub1 to a newly-formed holding company ("HoldCo") in exchange for 100 percent of the shares in HoldCo ("Date6 Transaction"). HoldCo made an election on Form 8832 to be treated as an association taxable as a corporation effective from the date of its formation. Coincident with its entity classification election, HoldCo also made an S election on Form 2553, and QSub elections on Forms 8869 on behalf of both Sub1 and Sub2. In accordance with § 1.1361-4(a)(2)(ii) Example 3 of the Income Tax Regulations, the Date6 Transaction is a reorganization under § 368(a)(1)(D) assuming the other conditions for reorganization treatment are met. With this election, HoldCo adopted a 52-53 week year ending with respect to Date3. HoldCo filed a return on Form 1120S for its initial year ended Date7, including the operations of both QSubs, Sub1 and Sub2.

Based (1) solely on the information submitted and the representations made in this ruling request, (2) on the condition that HoldCo made valid QSub elections with respect to Sub1 and Sub2 and (3) that the Date6 Transaction met the requirements for qualification as a reorganization under § 368(a)(1)(D), we rule that HoldCo will be subject to § 1374 with respect to the assets which HoldCo is regarded as holding under § 1.1361-4(a)(2)(i) as a result of the Date6 Transaction, and the 10-year recognition period for those assets will be reduced by the portion of the recognition period of Sub1

that had expired prior to the transfer. Section 1374(d)(8) of the Code and Ann. 86-128, 1986-51 I.R.B. 22.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion as to whether HoldCo is a valid S corporation or whether Sub1 and Sub2 are valid QSubs.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Virginia Voorhees
Virginia Voorhees
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
Corporate)

cc: